

05.02.2024
SI No.17
Court No.8
(gc)

**MAT 984 of 2023
CAN 1 of 2023
CAN 2 of 2023**

Union of India & Ors.

Vs.

Dharamdeo Ray

Mr. Kumar Jyoti Tewari,
Ms. Runu Mukherjee

...for the Appellants.

Mr. Debasish Kundu

...for the Respondent.

Re: CAN 1 of 2023

1. There is a delay of 27 days in filing the memorandum of appeal.
2. Sufficient cause being shown for not being able to file the memorandum of appeal within the period of limitation.
3. The delay of 27 days in filing the memorandum of appeal is condoned.
4. Accordingly, the application for condonation of delay is allowed and disposed of.

**Re: MAT 984 of 2023
CAN 2 of 2023**

5. The appeal is arising out of an order passed by the learned Single Judge on 23rd March, 2023 in a writ petition in which the appellants after accepting the correction of the domicile mismatch did not allow the

writ petitioner to participate in the recruitment process.

6. Mr. Kumar Jyoti Tewari, learned Counsel appearing on behalf of the Union of India submits that in the advertisement it has been specifically stated that the candidates are to be very careful and should exercise due diligence while providing information about domicile State and District in the online application form. No request for change of domicile State and District would be entertained by the Commission after submission of application form under any circumstances. If there is any variation of District and/or State mentioned by the candidate in the online application form and the domicile certificate submitted by them at the time of DME, their candidature shall be cancelled forthwith and they will not be allowed to participate in DME. Based on Clause 17 of the Important Instructions to Candidates it is submitted that subsequent correction of the domicile mismatch could not have been entertained and accepted by the learned Single Judge.
7. The learned Counsel appearing on behalf of the writ petitioner/respondent submits that in the earlier round of litigations, the

appellants have accepted an inadvertent error and allowed the writ petitioner to correct his domicile as evidently the documents produced by the petitioner would show that he belonged to the boarder district Nadia and all other credentials concerning his place of residence would show that he is a resident of Nadia for long.

8. In the aforesaid background, we need to consider the objection raised on behalf of the Union of India.
9. Pursuant to an advertisement for recruitment to the post of Constable (G.O) and/or Rifleman (G.D.) in Assam Rifle Examination, 2018 held by the Staff Selection Commission (SSC), the petitioner applied for recruitment. The writ petitioner admitted that due to mistake with regard to the entry in the district of domicile in column no.7 in the application form, it was stated to be Hooghly instead of Nadia. In column No.20, the writ petitioner stated that he did not belong to the border district. Immediately upon ascertainment of the mistake, the writ petitioner applied for correction of his domicile and made a prayer that instead of Hooghly, the district

should read as Nadia. The column Nos.24 and 25 of the original application form reflected the postal address and the permanent address of the petitioner correctly as Nadia. The petitioner was allowed to change his domicile on August 7, 2019. The petitioner obtained 62.47334% in his examination. In the Detailed Medical Examination (DME), the petitioner was found to be unfit on February 7, 2022. The DME was held in Nadia. Thereafter, the petitioner went for a Review Medical Examination (RME). The said examination was held at Nadia. After the RME was conducted, the petitioner was declared to be fit by a report dated September 22, 2020. Thereafter a panel was published on January 21, 2021 and the name of the petitioner was not included in the said panel, even though, the score of the petitioner was well above the cut off marks required to be included in the said panel. On the prayer of the writ petitioner, it transpired that the candidature of the writ petitioner was rejected for being unfit in DME. Surprisingly, no entry was made regarding the petitioner being declared to be fit in

RME. This prompted the petitioner to file a writ petition being WPA 5915 of 2021. In the said proceeding, the present appellant argued that the domicile mismatch was a very serious issue and the petitioner's application was rejected by a Board constituted on December 3, 2020 upon document verification. The petitioner was rejected on the ground of domicile mismatch. In the said proceeding, the learned Single Judge by an order dated 26th September, 2022 set aside the order passed by the Board dated 3rd December, 2020 and held that after allowing the petitioner to take appropriate steps for correction of domicile mismatch and allowing him to appear for DME and RME, the respondents could not reject the petitioner on the basis of the report of DME without considering the report of RME. It was clearly found in the order that the respondents have allowed to correct the domicile mismatch presumably and apparently on the ground that in column Nos.24 and 25, he has given the correct postal address and the permanent address and the said addresses have been accepted by the authority and only upon such

satisfaction was arrived at, the obvious mistake was allowed to be corrected. The appellants did not challenge the order dated 26th September, 2022. The said order has been accepted and attained finality.

10. In view of the fact that the issue of domicile mismatch has already been decided by the learned Single Judge by previous order dated 26th September, 2022 and the said order had attained finality. The said issue could not have been raised by the appellants and the learned Single Judge has rightly proceeded on the basis that this issue cannot be reopened again.
11. Mr. Tewari has made an attempt to show that an affidavit was filed before the learned Single Judge recording that the department could not have corrected the said mistake.
12. However, we are not convinced with the explanation offered as it was not disputed from the bar as well as from the record that column Nos.24 and 25 of the application form reflected the postal address and the permanent address of the petition and based on that, the competent authority had taken a conscious decision

of allowing the rectification which was an obvious mistake.

13. Mr. Tewari has drawn our attention to the decision of the Division Bench of the Kerala High Court in ***Neethulekshmi S. & Ors. Vs. Union of India & Ors., WA No.106 of 2022 decided on 23rd February, 2022*** to argue the observation made by us was also the view of the Hon'ble Division Bench of Kerala High Court but it has been stayed subsequently by the Hon'ble Supreme Court in SLP (C) Nos.13883-13884/2022 and the orders of the Hon'ble Supreme Court 19th September, 2022 and dated 2nd January, 2024 are placed before us.

14. The facts involved in the Kerala High Court are not similar to the facts which the learned Single Judge decided and we are presently deciding. The mentioning of the postal address and residential address in the instant case once found to be correct, it is quite clear that he belongs to the border district and it was on that ground the authority concerned had taken a conscious decision of rectifying the column No.17. It is not being urged from the bar that the particulars furnished by the writ petitioner

in column Nos.24 and 25 are incorrect. If these informations are correct then it is obvious that he belonged to district Nadia and the Detailed Medical Examination and Review Medical Examination both are admittedly held at Nadia. The challenge to the claim of the writ petitioner is also barred by *res judicata*. The earlier order setting aside of the order of the Board and directing the authority to proceed on the corrected/rectified certificate has attained finality.

15. Under such circumstances, we are unable to accept the said submission of Mr. Tewari.
16. The appeal fails.
17. Accordingly, the appeal and the application stand dismissed.
18. However, there shall be no order as to costs.
19. Urgent Photostat certified copy of this order, if applied for, be given to the parties on usual undertaking.

(Uday Kumar, J.)

(Soumen Sen, J.)